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12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF WASHINGTON
14

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 vs.

18 ROSHON EDWARD THOMAS,

19 Defendant.

No. 2:22-CR-035-RMP

United States' Sentencing
Memorandum

20
21 Plaintiff, United States of America, by and through Vanessa R. Waldref,
22 United States Attorney for the Eastern District of Washington, Tyler H.L. Tornabene
23 and Daniel Hugo Fruchter, Assistant United States Attorneys for the Eastern District
24 of Washington, submits the following Sentencing Memorandum. The United States
25 recommends that this Court sentence Defendant ROSHON EDWARD THOMAS to
26 a low-end Guideline sentence, three years of supervised release, restitution in the
27 amount of \$54,900, entry of a money judgment in that amount, and one mandatory
28 special penalty assessments totaling \$100. Based on the Defendant's end-stage

1 kidney disease, should this Court grant the Defendant's motion for a down ward
2 departure under USSG § 5H1.4, it should impose eight (8) months of home detention
3 as opposed to a term of incarceration.

4 I. Factual Background

5 On March 15, 2022, the Grand Jury returned an indictment charging the
6 Defendant with two counts of Wire Fraud, in violation of 18 U.S.C. § 1343. (ECF
7 No. 1). On May 16, 2022, as part of the plea negotiations, the Defendant was
8 charged by Information Superseding Indictment with one count of False, Fictitious,
9 or Fraudulent Claim in violation of 18 U.S.C. § 287. (ECF No. 22). That same
10 day the defendant pleaded guilty to the violation of 18 U.S.C. § 287, pursuant to a
11 plea agreement. (*See* ECF No. 25).

12 The charges against the Defendant stem from three Economic Injury
13 Disaster Loans (EIDLs) that the Defendant applied for requesting a total of
14 \$87,400 and receiving a total of \$54,900 from the U.S. Small Business
15 Administration (SBA), using materially false and fraudulent information. (ECF
16 No. 25 at 5-7). Specifically, on July 6, 2020, the Defendant applied for an EIDL
17 for a non-existent business he called "Thomas Tattoo Parlor," falsely claiming that
18 it was an actual business established approximately two years prior, employed 10
19 people, and had gross receipts of \$45,000 in the previous year. (ECF No. 25 at 5).
20 The Defendant's representations were completely false, as he knew, but through
21 them he was able to personally receive a total of \$22,500 from the SBA, which
22 included a \$10,000 advance. (ECF No. 25 at 6).

23 Just a few weeks after his first EIDL application the Defendant applied for
24 another EIDL on July 28, 2020, and once again did so for a non-existent business
25 he called "I's Design." (*Id.*). The Defendant falsely certified to the SBA that the
26 business had been established about a year earlier, had 7 employees, and gross
27 revenues of \$65,000 in the preceding year. (*Id.*). The Defendant knew these were
28 false representations, which he used to intentionally defraud the SBA out of an

1 additional \$32,400. (ECF No. 25 at 7).

2 Nearly a year later, on May 26, 2021, the Defendant tried again to defraud
3 the SBA through another phony EIDL application requesting an additional \$32,500
4 for his non-existent business “I’s Design.” (*Id.*). However, the SBA denied that
5 application and so prevented the Defendant from stealing additional monies from
6 the public through his scheme. (*Id.*).

7 The Defendant and the United States (herein collectively “the parties” where
8 appropriate) have reached substantial agreement in this case. The plea agreement
9 between the parties provides, *inter alia*, that the parties agree and stipulate that this
10 Court should order the Defendant to pay restitution to the SBA in the amount of at
11 least \$54,900. (ECF No. 25 at 10). The plea agreement further provides, *inter*
12 *alia*, that the parties agree that the Defendant’s base offense level for count one of
13 the Information is six (6) pursuant to USSG § 2B1.1(a)(2), that the Defendant’s
14 base offense level is increased by six (6) based an agreed amount of actual and
15 intended loss of \$87,400, pursuant to USSG § 2B1.1(b)(1)(D), and that the
16 Defendant’s offense level is reduced by two (2) for his timely acceptance of
17 responsibility under USSG § 3E1.1(a). (ECF No. 25 8-9). Accordingly, the
18 parties agree that the Defendant’s adjusted offense level, before applying any
19 downward departure, is ten (10). (*See id.*). The Presentence Investigation Report
20 (PSIR) also calculates the Defendant’s adjusted offense level, prior to the
21 application of any downward departure, to be ten (10) and further calculates the
22 Defendant’s criminal history as a Category III, yielding a sentencing range in Zone
23 C of 10-16 months incarceration. (ECF No. 36 at 22).

24 II. The Defendant’s Motion for Downward Departure Based on Health
25 (§ 5H1.4)

26 The Defendant has end-stage kidney disease, requiring nightly dialysis, and
27 is on the wait list for a kidney transplant through Swedish Medical Center in
28 Seattle and accordingly has moved for a downward departure under USSG

1 § 5H1.4. (ECF No. 32 at 1-2; *see also* ECF No. 36 at 17-18). The Defendant asks
2 this Court to depart downward from an offense level of ten (10) to an offense level
3 of four (4). (ECF No. 32 at 12). U.S. Probation also identifies USSG § 5H1.4 as a
4 potential ground for departure in this case based on the Defendant's medical
5 conditions requiring an extensive and time-consuming amount of treatment and
6 care. (ECF No. 36 at 21).

7 The United States has reviewed the materials provided by the Defendant, has
8 conferred with defense counsel, and has reviewed the details of the Defendant's
9 medical conditions in the PSIR. It is clear that USSG § 5H1.4 is a potential ground
10 for departure in this case. However, the six (6) level downward departure
11 requested by the Defendant and the resulting 0 to 6 month range, is not justified
12 based on the Defendant's extensive and troubling criminal history as well as the
13 nature of his conduct being a multi-year scheme to defraud an essential
14 government program during a global pandemic and which included creating and
15 submitting multiple fraudulent applications. Rather, for the reasons detailed
16 herein, should this Court depart downward under USSG § 5H1.4 it should do so by
17 no more than one (1) level. Doing so would yield a Zone B sentencing range of 8
18 to 14 months which would be eligible for the imposition of home detention per
19 USSG § 5B1.1(a)(2) as a substitute for imprisonment under USSG § 5F1.2.
20 Should this Court so depart downwards the United States' recommendation would
21 be for a low-end sentence of 8 months home detention.

22 Given the Defendant's extreme and chronic medical conditions, home
23 detention may be an appropriate alternative to incarceration. Home detention can
24 of course be tailored and adjusted to employment needs and medical needs as well
25 as other proscribed needs. *See* USSG § 5F1.2 n. 1. Of note in this case, it appears
26 that home detention would not result in the Defendant being removed from the
27 kidney transplant waiting list. As detailed below, home detention would still
28 however provide a sentence that is sufficient, but no greater than necessary, given

1 the statutory sentencing factors.

2 III. Should this Court Depart Downward Under USSG § 5H1.4, the
3 United States' Recommended Sentence is Sufficient, but No Greater
4 Than Necessary, and Otherwise Comports with the Relevant
5 Sentencing Factors

6 The Court must consider all of the sentencing factors set forth in § 3553(a)
7 in determining the Defendant's sentence. Those factors include: (1) the nature and
8 circumstances of the offense and the history and characteristics of the defendant;
9 (2) the need for the sentence imposed to reflect the seriousness of the offense, to
10 promote respect for the law, and to provide just punishment for the offense; (3) the
11 need to afford adequate deterrence to criminal conduct, and to protect the public
12 from further crimes of the defendant; (4) the need to provide the defendant with
13 educational or vocational training, medical care, or other correctional treatment in
14 the most effective manner; (5) the guidelines and policy statements issued by the
15 Sentencing Commission; (6) the need to avoid unwarranted sentencing disparities
16 among defendants with similar records who have been found guilty of similar
17 conduct; and (7) the need to provide restitution to any victims of the offense. 18
18 U.S.C. § 3553(a).

19 In this case, the nature and circumstances of the Defendant's sentence as
20 well as his history and characteristics auger towards a sentence of more than
21 probation with no confinement of any kind. The Defendant, after a career of
22 violent crime seemingly stopped only after his severe medical condition began in
23 2002. He subsequently elected to fraudulently exploit a program intended to
24 prevent individuals from being financially ravaged by the impact of a global
25 pandemic. This of course informs the nature and seriousness of the Defendant's
26 offense. He did not choose to exploit a company, which would have been bad
27 enough, nor did he choose to only defraud an essential government program one
28 time instead electing to defraud it, and attempt to defraud it, multiple times over
the course of many months. The Defendant's crime required planning, reflection,

1 and a disregard for the well-being of others during a time of international crisis.
2 That said, the Defendant's need for medical care and relevant policy statements
3 issued by the Sentencing Commission in this regard support a more lenient
4 sentence than 10 months of incarceration. However, the need to avoid
5 unwarranted sentencing disparities among similarly situated defendants certainly
6 supports the imposition of a sentence more onerous than probation with no
7 confinement or detention of any kind. Finally, the need to provide restitution in
8 this case is adequately addressed in the plea agreement.

9 **IV. Conclusion**

10 The United States recommends that should this this Court depart downward
11 under USSG § 5H1.4 that it depart by no more than one (1) offense level and
12 impose a sentence of eight (8) months home detention, all mandatory and
13 appropriate conditions of probation under USSG § 5B1.3, three years supervised
14 release, \$54,900 in restitution, and a \$100 special penalty assessment.

15
16 RESPECTFULLY SUBMITTED this 4th day of August, 2022.

17
18 Vanessa R. Waldref
19 United States Attorney

20 **/s/ Tyler H.L. Tornabene**

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29 **CERTIFICATE OF SERVICE**

30 I hereby certify that on August 4, 2022, I caused the foregoing to be filed with
31 the Clerk of the Court using the CM/ECF System and service of such filing will be

1 sent by reliable electronic means to attorney John V. McEntire, IV, for Defendant
2 Roshon Edward Thomas, as follows:

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11 *s/Tyler H.L. Tornabene*
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